

The City Attorney
City of San Diego
MEMORANDUM

236-6220

DATE: October 29, 1986

TO: Risk Management Director via Deputy City
Manager Coleman Conrad

FROM: City Attorney

SUBJECT: Management Benefits Plan

You have recently asked this office several questions concerning an administrative interpretation of the Management Benefits Plan (MBP) which indicates, in part, that on or after November 15, 1985, MBP midyear enrollees who are not participating in the City's retirement system will receive an additional dollar allocation in lieu of the City paid retirement offset. The administrative interpretation indicated that there would be no retroactive changes to the policy. You stated that two City employees who became eligible for MBP in July of 1985 and who were not participating in the City's retirement system did not receive the additional dollar allocation in lieu of the City paid retirement offset. You indicated that prior to the adoption of

the administrative interpretation, only individuals who were eligible and enrolled during the open enrollment period qualified for the additional dollars in lieu of City paid retirement offsets. The two employees have requested a review of the policy because they believe that they are entitled to the additional benefit. You have asked us to answer four specific questions concerning this issue. The four questions are:

1. Was the November 19, 1985 administrative interpretation legal and binding?
2. If it was, were the two City employees in question treated fairly according to the administrative interpretation provisions?
3. If not, should the City adjust not only the accounts of the two City employees, but also the accounts of the other five employees this policy affected?
4. If any adjustments are to be done, what action is required for authorization?

In response to your first question, we believe that the administrative interpretation is not consistent with the terms of the 1985-86 salary ordinance which clearly states that "the conditions of qualifications for all benefit plans are set by the

Council." Nowhere in the salary ordinance or in the resolution establishing MBP is there any authority for treating midyear enrollees in MBP differently than those who enroll during the open enrollment period. Resolution No. 264304 which is cited in the material accompanying your memorandum as the basis for the administrative interpretation is not very helpful as it does not address the lack of an adjustment for retirement offsets for midyear enrollees in the plan. We have been unable to determine how the policy of treating midyear enrollees differently than open enrollees originally developed because there appears to have been no written record of this policy. We therefore believe that there is no legal basis for denying midyear enrollees equal participation in a plan for which they are otherwise qualified. Based on this conclusion, your second question is moot. In response to your third question, we believe that all employees who have been denied a benefit because of this policy should be made whole and receive the just compensation for fiscal year 1985-1986 that the City Council approved.

Your last question asks how these adjustments should be made. City Council action is not required in this matter because these adjustments should be treated as any other claim for back compensation due an employee.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:mmm:352

cc C. M. Fitzpatrick

MS-86-9